

(1955) 09 PAT CK 0012
In the Patna High Court
Case No : Misc. Judicial Case No. 263 of 1954

Rajo Singh

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 21-09-1955

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 43, 44
Bihar Private Irrigation Works Act, 1922 — Section 5(3)
Constitution of India, 1950 — Article 226

Citation : AIR 1956 Patna 89

Hon'ble Judges : Ramaswami, J;Imam, J

Bench : Division Bench

Advocate : Lakshman Saran Sinha, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the petitioner Rajo Singh has moved the High Court for grant of a writ of certiorari under Article 226 of the Constitution for the purpose of calling up and quashing the certificate issued by the Subdivisional Officer, Barh, on 19-2-1952 and the proceedings taken thereon in Certificate Case No. 11G of 1951-52 before Mr. K. Jha, Certificate Officer of Barh.

2. On 17-11-1947, the petitioner executed a contract to repair the irrigation system of village, Motibigha. The contract was entered into between the petitioner and the Subdivisional Officer of Barh. An estimate was prepared for a sum of Rs. 4,995/- and it was agreed between the parties that the work must be completed by 25-1-1948. As there was scarcity of labourers, the petitioner filed an application before the Subdivisional Officer for extension of the time to execute the work. The application was allowed and the Subdivisional Officer extended the time. After the work was completed, the Circle Officer of Barh checked the work in March, 1949.

The petitioner submitted a bill which was finally passed by the Subdivisional

Officer and the amount stipulated in the contract was paid to the petitioner. After a lapse of two and a half years the Subdivisional Officer deputed the Assistant Engineer to check the work. The Assistant Engineer made a report that some earth had been washed away, but he roughly estimated the earth work done to be Rs. 1,340/-. On 19-2-1952, the Subdivisional Officer issued a certificate for a sum of Rs. 3,548 which was the excess payment made to the petitioner by virtue of the contract.

It appears that the petitioner was also prosecuted in the criminal Court on the complaint of the Circle Officer Rajeshwari Prasad. The complaint petition was filed on 16-2-1952, but the criminal court acquitted the petitioner of the charges levelled against him by its judgment dated 27-4-1953. But the certificate case proceeded against the petitioner, and on 9-3-1953. the Certificate Officer issued a warrant of arrest against the petitioner and released him on bail of Rs. 8,000/- with two sureties of like amount each.

On 20-6-1953, the Certificate Officer passed an order that the petitioner should be committed to civil prison for six months since he was not agreeable to pay the amount mentioned in the certificate. An appeal was preferred on behalf of the petitioner to the Collector, but the appeal was dismissed on 16-9-1953. An application in revision was also taken before the Commissioner of Patna Division but it was summarily dismissed. In this state of facts, the petitioner has moved the High Court for granting a writ of certiorari on the ground that the certificate proceedings were "ab initio" void and without jurisdiction.

3. On behalf of the petitioner, the main contention of Mr. Lakshman Saran Sinha is that the certificate issued by the Certificate Officer of Barh on 19-2-1952 and the certificate proceedings taken before Mr. M. K. Jha were completely void and without jurisdiction. Counsel submitted that the amount of Rs. 4,995/- mentioned in the certificate was not a "public demand" within the meaning of Section 3(6) of Bihar and Orissa Act IV of 1914. Section 3(6) of Bihar & Orissa Act, IV of 1914 defines a "public demand" to mean any arrear or money mentioned or referred to in Schedule I of the Act and includes any interest which may, by law, be chargeable thereon up to the date on which a certificate is signed under Part II.

Counsel for the petitioner referred to Schedule I of the Act and argued that the demand against the petitioner was not covered by any of the items mentioned in Schedule I. It was, therefore, contended that the certificate issued by the Subdivisional Officer and the certificate proceedings thereon were completely illegal and without jurisdiction. On this point the learned Government Pleader stated that the demands mentioned in the certificate would fall within the ambit of paragraph 4 of Schedule 1 of Bihar and Orissa Act IV of 1914. Paragraph 4 of Schedule I reads as follows:

" Any money which is declared by any enactment for the time being in force:

(i) to be a demand or public demand; or, (ii) to be recoverable as arrears of a

demand or public demand, or as a demand or public demand :

or (iii) to be recoverable under the Bengal Land Revenue Sales Act, 1868".

The Government Pleader then referred, to Section 5 (3)(a) of the Bihar Private Irrigation Works Act (5 of 1922) which reads as follows:

"If any person required by the Collector under Clause (a) of Sub-section (1) to carry out any work of re-pair, extension or alteration fails to do so in the manner and within the time specified in the order or within such further time (if any) as may be allowed by the Collector in writing, the Collector may impose on him such pecuniary penalty as he thinks proper in all the circumstances of the case." Section 5(3) (b) reads thus:

"Such penalty shall be recoverable as a public demand payable to the Collector." The argument put forward by Government Pleader was that the amount mentioned in the certificate was in the nature of penalty imposed by the Collector u/s 5(3) (a.) because the petitioner failed to carry out the work of repair in the manner and within the time specified by the Collector's order. We do not consider that there is any warrant or justification for this argument. The true meaning of Section 5(3) (a) can be gathered only if it is read along with Section 5(1)(a). Section 5(1)(a) provides:

"5(1). If, after making an inquiry u/s 4, the Collector is satisfied that the state of disrepair of the irrigation work is such as materially affects or is likely to affect materially the irrigation of the lands which are dependent thereon for a supply of water, or that any extension or alteration of such irrigation work is necessary for the purposes specified in Clause (b) of Section 3, he shall issue an order in writing requiring that the proposed work of repair, extension or alteration shall be carried out:

(a) by one or more of the persons on whom notices under Clause (ii) or Section 3 have been served and who agrees or agree to carry out the said work, or",

Section 3(ii) of the Act empowers the Collector to cause notice in the prescribed manner to be served on

"every person known or believed to be under an obligation to maintain the irrigation work in an efficient state, calling on him to show cause on the date specified in the notice why he should not be required to repair the said work".

Reading all these provisions together, it is manifest that Section 5(3) (a) authorises the Collector to impose a pecuniary penalty only on these persons mentioned, in Section 3(ii) of the Act. On the facts disclosed in the application, it cannot be said that the petitioner is one of the persons who come within the meaning of Section 3(ii) of Bihar Private Irrigation Works Act (Act 5 of 1922).

It follows, therefore, that the Subdivisional Officer had no authority to impose any pecuniary penalty u/s 5(3)(a) of the Act upon the petitioner or to recover a sum of Rs. 3,548/- mentioned in the certificate. It must, therefore be held that

the certificate issued by the Subdivisional Officer on 19-2-1952, for the recovery of the aforesaid sum from the petitioner was beyond his jurisdiction and a complete nullity. It must further be held that the proceedings taken upon this certificate in the Certificate Case No. 11G of 1951-52 before Mr. K. Jha, Certificate Officer of Barh, are also completely without jurisdiction.

4. In the course of the argument, the learned Government Pleader raised the point that the proper remedy for the petitioner was to file a suit in the Civil Court under Sections 43 and 44 of Bihar and Orissa Act IV of 1914. In other words, it was contended that the liability of the petitioner to pay the amount could be challenged only by resorting to the special machinery, provided by the Act. It was also pointed out that u/s 43 the petitioner had to file a Civil Suit within the period of six months to have the certificate against him cancelled or modified.

In our opinion, sections 43 and 44 apply only to a case where the certificate has been "duly filed" under the Act; in other words, when "public demand" is due within the meaning of Section 3 (6) of the Act. If at the time when the certificate is signed by the Certificate Officer there is no "public demand" due from the petitioner, the certificate is ultra vires and all the proceedings founded thereon are null and void. In such a case, sections 43 and 44 of the Act have no application, and the petitioner is not bound to have recourse to the special machinery provided in these sections.

That was the view taken by Page and Mallik, JJ. in -- Harendra Kumar Rai Choudhuri and Others Vs. Secy. of State and Others, , and We think that that is the correct view. The same principle was enunciated by the Judicial Committee in -- "Balkishen Das v. Simpson 25 Cal 833 (PC) (B). It was observed by Lord Watson, who delivered the judgment of the Board that

"the Act does not sanction and by plain implication forbids the sale of any estate which is not at the time in arrear of Government revenue. But the chief and substantial objection upon which the appellants' plaint is based is that at the time when their 5-annas share of the village Shahzadpur Anderkilla was sold, there was no arrears of revenue due by them in respect of it.... The result is that the whole of the proceedings of the Collector with a view to the sale of the 5-annas share were beyond his jurisdiction, and are not entitled to the protection given him by the Act in case where sale is authorised, although it may be attended with some irregularity or illegality."

5. For these reasons, we are of opinion that the certificate issued by the Subdivisional Officer of Barh on 19-2-1952, against the petitioner for a sum of Rs. 3,548/- and the proceedings taken, against the petitioner before Mr. K. Jha, Certificate Officer of Barh, in Certificate Case No. 11G of 1951-52 are null and void. We accordingly order that a writ in the nature of certiorari should be issued to quash the certificate of the Subdivisional Officer dated 19-2-1952, and also the certificate proceedings taken thereon against the petitioner in Certificate Case No. 11G of 1951-2 pending before Mr. K. Jha, Certificate Officer of Barh.

The application is accordingly allowed with costs. Hearing Fee: Rs. 50/-.